

Regular Session, 2001

ACT No. 403

SENATE BILL NO. 239

BY SENATORS C. JONES AND CRAVINS AND REPRESENTATIVES
BAYLOR, BROOME, K. CARTER, CURTIS, GALLOT,
GLOVER, GREEN, GUILLORY, HOLDEN, HUDSON,
HUNTER, L. JACKSON, M. JACKSON, LUCAS,
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RICHMOND, SWILLING AND WELCH

AN ACT

To amend and reenact R.S. 14:56.2(D), 62.1(B) and (C), 69.1(B)(2), 70.1(B),
82(D), 91.7(C), 92.2(B), 92.3(C), 106(G)(2)(a) and (3), 106.1(C)(2),
119(D), 119.1(D), 122.1(D), 123(C)(1) and (2), 352, and 402.1(B),
R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii), 1303(B), and 1304(B), R.S.
27:262(C), (D), and (E), 309(C), and 375(C), R.S. 40:966(B), (C)(1),
(D), (E), and (F), 967(B)(1), (2), (3), and (4)(a) and (b), and (F)(1), (2),
and (3), 979(A), 981, 981.1, 981.2(B) and (C), and 981.3(A)(1) and
(E), and Code of Criminal Procedure Art. 893(A), and to enact R.S.
15:574.22 and R.S. 40:966(G), relative to non-violent crimes; to
provide relative to mandatory sentences for such crimes; to remove
mandatory sentences for certain offenses; to reduce the length of
incarceration in the penalty provisions for certain offenses; to provide
that the sentence for certain offenses can be subject to parole,
probation, or suspension of sentence; to provide minimum sentences of
imprisonment for certain offenses; to provide with respect to sentencing
for multiple felony convictions; to provide with respect to the
suspension of sentences for certain crimes; to provide with respect to
sentencing for violations of the Uniform Controlled Dangerous
Substances Law; to create the Louisiana Risk Review Panel; to provide

for membership of the panel; to provide for the powers and duties of the panel; to provide for the adoption of rules; to clarify penalty provisions with regard to violations involving certain Schedule II controlled dangerous substances; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:56.2(D), 62.1(B) and (C), 69.1(B)(2), 70.1(B), 82(D), 91.7(C), 92.2(B), 92.3(C), 106(G)(2)(a) and (3), 106.1(C)(2), 119(D), 119.1(D), 122.1(D), 123(C)(1) and (2), 352 and 402.1(B) are hereby amended and reenacted to read as follows:

§56.2. Criminal damage of a pipeline facility

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D. Whoever commits the crime of criminal damage of a pipeline facility wherein it is foreseeable that human life might be threatened as a result of such conduct shall be imprisoned at hard labor ~~without benefit of suspension of sentence~~ for not less than two years nor more than ten years and shall be fined not more than ten thousand dollars.

* * *

§62.1. Simple burglary of a pharmacy

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B. Whoever commits the crime of burglary of a pharmacy shall be imprisoned at hard labor for not less than one nor more than nine years ~~without benefit of parole, probation or suspension of sentence.~~

C. On a second or subsequent conviction, the offender shall be imprisoned at hard labor for not less than two nor more than ten years ~~without benefit of parole, probation or suspension of sentence.~~

* * *

§69.1. Illegal possession of stolen firearms

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B. Whoever commits the crime of illegal possession of firearms shall be punished as follows:

* * *

(2) For second and subsequent offenses, the penalty shall be imprisonment, with or without hard labor, for not less than two years nor more than ten years, ~~without the benefit of probation, parole, or suspension of sentence.~~

* * *

§70.1. Medicaid fraud

* * *

B. Whoever commits the crime of Medicaid fraud shall be imprisoned, with or without hard labor, for not more than five years, or may be fined not more than twenty thousand dollars, or both. ~~A sentence of at least one year of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence if the loss to the state is in excess of twenty-five thousand dollars.~~

* * *

§82. Prostitution; definition; penalties; enhancement

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D. If the offense occurred as a result of a solicitation by the offender while the offender was located on a public road or highway, or the sidewalk, walkway, or public servitude thereof, the court shall sentence the offender to imprisonment for a minimum of ninety-days, ~~which, except as provided in this Subsection, shall not be suspended.~~ ~~The court may suspend imposition of forty-five days of the ninety-day~~

imprisonment and **If a portion of the sentence is suspended, the court**
may place the offender upon supervised probation if the offender
 agrees, as a condition of probation, to perform two hundred forty hours
 of community service work collecting or picking up litter and trash on
 the public roads, streets, and highways, under conditions specified by
 the court.

* * *

§91.7. Unauthorized possession or consumption of alcoholic
 beverages on public school property

* * *

C. Whoever violates the provisions of this Section shall be fined
 not more than one thousand dollars and imprisoned not less than fifteen
 days nor more than six months ~~without benefit of suspension of~~
~~sentence.~~

* * *

§92.2. Improper supervision of a minor by parent or legal custodian;
 penalty

* * *

B. Whoever violates the provisions of this Section shall be fined
 not less than twenty-five dollars and not more than two hundred fifty
 dollars for each offense, or imprisoned for not more than thirty days,
 or both. ~~Imposition of sentence shall not be suspended unless the~~
~~offender is placed on probation with a minimum condition that he~~ **A**
minimum condition of probation shall be that the offender
 participate in forty hours of court-approved community service
 activities, or a combination of forty hours of court-approved
 community service and attendance at a court-approved family

counseling program by both a parent or legal custodian and the minor.

* * *

§92.3. Retaliation by a minor against a parent, legal custodian,
witness, or complainant

* * *

C. A minor who violates the provisions of this Section shall be placed in the custody of the Department of Public Safety and Corrections for a period not to exceed six months. ~~Imposition of sentence shall not be suspended unless the minor is placed on probation with a minimum condition that he~~ **A minimum condition of probation shall be that the offender** participate in forty hours of court-approved community service activities or a combination of forty hours of court-approved community service and attendance at a court-approved family counseling program by both a parent or legal custodian and the minor.

* * *

§106. Obscenity

* * *

G. * * *

(2)(a) On a second conviction, the offender shall be imprisoned, with or without hard labor for not less than six months nor more than three years, ~~without benefit of probation, parole, or suspension of sentence,~~ and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.

* * *

(3) On a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than two years nor more than five years, ~~without benefit of probation, parole, or~~

~~suspension of sentence~~, and in addition may be fined not less than five thousand dollars nor more than ten thousand dollars.

* * *

§106.1. Promotion or wholesale promotion of obscene devices

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C. * * *

(2) On a second conviction, the offender shall be imprisoned with or without hard labor for not less than six months nor more than three years, ~~without benefit of probation, parole, or suspension of sentence~~, and in addition may be fined not less than two thousand five hundred dollars nor more than five thousand dollars.

* * *

§119. Bribery of voters

* * *

D. Any fine imposed and collected from the convicted person or persons under the provisions of this Section shall be paid to the informer or informers who shall give information resulting in the conviction of said person or persons, provided that the informer or informers shall not have been party to the violation of this Section as either the bribe-giver or the bribe-taker. ~~No penalty imposed under the provisions of this Section shall be suspended or remitted by any court or other authority, provided that this provision shall not be construed against the right of suspensive appeal granted by the constitution and laws of this state.~~

§119.1. Bribery of parents of school children

* * *

D. Any fine imposed and collected from the convicted person

or persons under the provisions of this Section shall be paid to the informer or informers who shall give information resulting in the conviction of said person or persons. ~~No penalty imposed under the provisions of this Section shall be suspended or remitted by any court.~~

* * *

§122.1. Intimidation and interference in the operation of schools

* * *

D. Any fine imposed and collected from the convicted person or persons under the provisions of this Section shall be paid to the informer or informers who shall give information resulting in the conviction of said person or persons. ~~No penalty imposed under the provisions of this Section shall be suspended or remitted by any court.~~

§123. Perjury

* * *

C. Whoever commits the crime of perjury shall be punished as follows:

(1) When committed on a trial in which a sentence of death or life imprisonment may be imposed, the offender shall be fined not more than one hundred thousand dollars or imprisoned at hard labor for not less than five years, ~~without benefit of parole, probation, or suspension of sentence,~~ nor more than forty years, or both.

(2) When committed on a trial in which a sentence of imprisonment necessarily at hard labor for any period less than a life sentence may be imposed, the offender shall be fined not more than fifty thousand dollars or imprisoned at hard labor for not less than one year, ~~without benefit of parole, probation, or suspension of sentence,~~ nor more than twenty years, or both.

* * *

§352. Bribery of withdrawn candidates for office prohibited; penalty;
immunity of witnesses; fine to be paid informer

A. No person shall give or offer to give, directly or indirectly, any money or property to any person, who was a candidate for public office in any primary election held or to be held under the laws of this state who may have withdrawn, or who was eliminated prior or subsequent to the first primary election as a candidate for public office, for the purpose of securing or giving his political support to any remaining candidate or candidates for public office in the first or succeeding second primary election held under the laws of this state.

B. No candidate who has withdrawn or was eliminated prior or subsequent to the first primary election as a candidate for public office shall accept or offer to accept, directly or indirectly, any money or property which is given for the purpose of securing or giving his political support to any remaining candidate or candidates for public office in the first or succeeding second primary election for public office held under the laws of this state.

C. Whoever violates this Section shall be fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned for not more than one year.

D. In the trial of persons charged with a violation of this Section either the bribe giver or the bribe taker may give evidence, or make affidavit against the other, with immunity from prosecution in favor of the first informer, except for perjury in giving the testimony.

~~No penalty imposed under the provisions of this Section shall be suspended or remitted by any court or other authority. This provision~~

~~shall not be construed against the right of suspensive appeal granted by the Constitution and laws of this state.~~

* * *

§402.1. Taking of contraband to state owned hospitals unlawful;
penalty

* * *

B. Whoever violates any provision of this Section shall upon conviction be imprisoned with or without hard labor for not more than three years ~~without being eligible for a suspended sentence or for a parole.~~

Section 2. R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii), 1303(B), and 1304(B) are hereby amended and reenacted and R.S. 15:574.22 is hereby enacted to read as follows:

§529.1. Sentences for second and subsequent offenses; certificate of warden or clerk of court in the state of Louisiana as evidence

A.(1) Any person who, after having been convicted within this state of a felony or adjudicated a delinquent under Title VIII of the Louisiana Children's Code for the commission of a felony-grade violation of either the Louisiana Controlled Dangerous Substances Law involving the manufacture, distribution, or possession with intent to distribute a controlled dangerous substance or a crime of violence as listed in Paragraph (2) of this Subsection, or who, after having been convicted under the laws of any other state or of the United States, or any foreign government of a crime which, if committed in this state would be a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:

* * *

(b) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:

* * *

(ii) If the third felony ~~or either of~~ **and** the two prior felonies is ~~a felony~~ **are felonies** defined as a crime of violence under R.S. 14:2(13), **a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of commission of the offense,** or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ~~more than five~~ **ten** years **or more** or any other ~~crime~~ **crimes** punishable by imprisonment for ~~more than~~ twelve years **or more, or any combination of such crimes,** the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(c) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:

* * *

(ii) If the fourth ~~or subsequent~~ felony ~~or any~~ **and two** of the prior felonies ~~is a felony~~ **are felonies** defined as a crime of violence under R.S. 14:2(13), **a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of commission of the offense,** or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ~~more than~~ five **ten** years **or more** or of any other crime punishable by imprisonment for ~~more than~~ twelve years **or more, or any combination**

of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

* * *

§574.22. Louisiana Risk Review Panel

R.S. 15:574.22 is all new law.

A. The Louisiana Risk Review Panel is hereby created within the Department of Public Safety and Corrections. The secretary of the Department of Public Safety and Corrections may create not more than three risk review panels.

B. Each panel shall consist of five members in accordance with the following provisions:

(1) One member shall be a board certified psychologist. This member shall be selected, on a rotating basis, from a pool of nine psychologists authorized and approved by the secretary of the Department of Public Safety and Corrections.

(2) One member shall be the warden, or in his absence the deputy warden, of the institution where the offender is incarcerated.

(3) One member shall be the secretary of the Department of Public Safety and Corrections, or his designee, who shall be chairman.

(4) A retired judge with criminal law experience, who shall be appointed by the governor.

(5) A probation or parole officer with a minimum of ten years experience, who shall be appointed by the governor.

C. A majority of the members of each panel shall constitute a quorum. All official actions of the panel shall require the affirmative vote of a majority of the members of the panel.

D. Members, other than the secretary, warden, their designees, or psychologists who are employees of the department, may receive a per diem for each day spent in actual attendance of meetings of the panel. The amount of the per diem shall be fixed by the secretary in an amount not to exceed forty dollars per hour. Members may also receive a mileage allowance for mileage traveled in attending meetings. The mileage allowance shall be fixed by the panel in an amount not to exceed the mileage rate for state employees.

E. Each panel shall meet on the call of each chairman or upon the request of any three members.

F. The panels shall review, notwithstanding the provisions of R.S. 15:574.12, presentence reports, prison records, medical and psychological records, information and data gathered by the staffs of the Board of Pardons and the Board of Parole, information provided by the convicted person, the district attorney, the assistant district attorney, and any other information obtained by the boards or the Department of Public Safety and Corrections.

G. The panel shall have the duty to evaluate the risk of danger to society which each person who has been convicted of a crime not defined or enumerated as a crime of violence in R.S. 14:2(13), and who is confined in a prison facility of any kind, may present if released from confinement. However, the panel shall not evaluate the risk of danger to society presented by:

(1) A person convicted of a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of commission of the offense.

(2) A person convicted of a violation of the Uniform Controlled

Dangerous Substances Law except for any of the following:

(a) Possession as defined in R.S. 40:966(C), 967(C), 968(C), 969(C) or 970(C).

(b) Distribution or possession with the intent to distribute cocaine where the offense of conviction involves less than twenty-eight grams of cocaine.

(c) Distribution or possession with the intent to distribute marijuana where the offense of conviction involves less than one pound of marijuana.

(3) A person sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes for which the person was convicted and sentenced under R.S. 15:529.1 is a crime of violence defined or enumerated in R.S. 14:2(13).

H. The secretary of the Department of Public Safety and Corrections, on or before January 1, 2002, shall adopt and promulgate rules, regulations, and procedures under which the panels shall perform their duties. The rules, regulations, and procedures shall include, but shall not be limited to, the following:

(1) The requirements necessary for a convicted person to apply and be considered for risk review, the type of crime committed, the age of the convicted person, the time served in confinement, the prison record of the convicted person, the damage or injury occasioned by the crime committed, any resources available to the person in the event of release, and any other criteria or information which the panel may deem to be advisable or helpful in the performance of its duty.

(2) The psychological evaluations or other evaluations which shall be utilized in order for the panel to make the risk evaluation

required by this Section.

(3) The manner in which a victim of the crime or crimes committed by the convicted person may provide information to the panel.

(4) The procedure by which persons who are to be evaluated may apply for such risk evaluation.

(5) The frequency with which such persons may apply for risk evaluation.

(6) The procedure by which risk evaluations shall be conducted, whether by record review only, by hearing only, or by both record review and hearing.

(7) The manner in which a recommendation of the panel shall be determined, reported, and disseminated.

I. When a panel has determined by a preponderance of the evidence that a person will not present a risk of danger to society if released from confinement, the panel may recommend that the person be considered for clemency by the Board of Pardons or the panel may recommend that the person be considered for parole by the Board of Parole. The panel may also recommend to the appropriate board such conditions for clemency or parole as it may deem advisable. Any recommendation of the panel shall not be binding on the Board of Pardons or the Board of Parole.

* * *

§1303. Interception and disclosure of wire, electronic, or oral communications

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B. Any person who violates the provisions of this Section shall

be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard labor, ~~without benefit of probation, parole, or suspension of sentence.~~

* * *

§1304. Manufacture, distribution, or possession of wire or oral communication intercepting devices prohibited

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B. Any person who violates the provisions of this Section shall be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard labor, ~~without benefit of probation, parole, or suspension of sentence.~~

* * *

Section 3. R.S. 27:262(C), (D), and (E), 309(C), and 375(C) are hereby amended and reenacted to read as follows:

§262. Skimming of gaming proceeds

* * *

C. Whoever commits the crime of skimming of gaming proceeds when the amount skimmed or to be skimmed is one thousand dollars or more but less than ten thousand dollars shall be imprisoned at hard labor for not less than one year nor more than ten years, ~~without benefit of probation, parole, or suspension of sentence~~ and shall be fined not less than one thousand dollars nor more than twenty-five thousand dollars.

D. Whoever commits the crime of skimming of gaming proceeds when the amount skimmed or to be skimmed is ten thousand dollars or more but less than twenty-five thousand dollars shall be imprisoned at hard labor for not less than ten years and not more than

twenty-five years ~~without benefit of probation, parole, or suspension of sentence~~ and shall be fined not less than five thousand dollars nor more than fifty thousand dollars.

E. Whoever commits the crime of skimming of gaming proceeds when the amount skimmed or to be skimmed is twenty-five thousand dollars or more shall be imprisoned at hard labor for not less than twenty-five years or for life ~~without benefit of probation, parole, or suspension of sentence.~~

* * *

§309. Video draw poker crimes and penalties; unauthorized devices

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C. Skimming of video draw poker proceeds is the intentional excluding, or the taking of any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from video draw poker. Whoever commits skimming of video draw poker proceeds shall be imprisoned at hard labor for not less than one year nor more than ten years, ~~without benefit of probation, parole, or suspension of sentence,~~ and may be fined not more than twenty-five thousand dollars.

* * *

§375. Crimes and penalties; false statements; unauthorized slot machines; skimming of slot machine proceeds; payroll check cashing; gambling devices

* * *

C. Any person who intentionally excludes, or takes any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from slot machine

activity shall be imprisoned at hard labor for not less than one year nor more than ten years, ~~without benefit of probation, parole, or suspension of sentence,~~ and may be fined not more than twenty-five thousand dollars.

* * *

Section 4. R.S. 40:966(B), (C)(1), (D), (E), and (F), 967(B)(1), (2), (3), and (4)(a) and (b), and (F)(1), (2), and (3), 979(A), 981, 981.1, 981.2(B) and (C), and 981.3(A)(1) and (E) are hereby amended and reenacted and R.S. 40:966(G) is hereby enacted to read as follows:

§966. Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana

* * *

B. Penalties for violation of Subsection A. Any person who violates Subsection A with respect to:

(1) A substance classified in Schedule I which is a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), upon conviction shall be sentenced to ~~life~~ imprisonment **for not less than five nor more than fifty years** at hard labor **at least five years of which shall be served** without benefit of probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(2) Any other controlled dangerous substance classified in Schedule I, shall upon conviction be sentenced to a term of imprisonment at hard labor for not less than five years nor more than thirty years, **at least five years of which shall be served without benefit of parole, probation, or suspension of sentence,** and pay a fine

of not more than fifty thousand dollars.

C. Possession. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule I unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner or as provided in R.S. 40:978, while acting in the course of his professional practice, or except as otherwise authorized by this Part. Any person who violates this Subsection with respect to:

(1) A substance classified in Schedule I which is a narcotic drug (all substances in Schedule I preceded by an asterisk), shall be imprisoned at hard labor for not less than four years nor more than ten years ~~without benefit of probation or suspension of sentence~~ and may, in addition, be required to pay a fine of not more than five thousand dollars.

* * *

R. S. 40:966(D) is all new law.

D. Other penalties for possession. (1) Except as otherwise authorized in this Part:

(a) Any person who knowingly or intentionally possesses twenty-eight grams or more, but less than two hundred grams, of a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), shall be sentenced to serve a term of imprisonment at hard labor of not less than five years, nor more than thirty years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars.

(b) Any person who knowingly or intentionally possesses two hundred grams or more, but less than four hundred grams, of a narcotic

drug (all substances in Schedule I preceded by an asterisk "*"), shall be sentenced to serve a term of imprisonment at hard labor of not less than ten years, nor more than thirty years, and to pay a fine of not less than one hundred thousand dollars, nor more than three hundred fifty thousand dollars.

(c) Any person who knowingly or intentionally possesses four hundred grams or more of a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), shall be sentenced to serve a term of imprisonment at hard labor of not less than fifteen years, nor more than thirty years, and to pay a fine of not less than two hundred fifty thousand dollars, nor more than six hundred thousand dollars.

~~D.E.~~ Possession of marijuana. (1) Except as provided in Subsections E and F hereof, on a first conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall be fined not more than five hundred dollars, imprisoned in the parish jail for not more than six months, or both.

(2) Except as provided in Subsections ~~E and F hereof~~ **F or G of this Section**, on a second conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than five years, or both.

(3) Except as provided in Subsections ~~E and F hereof~~ **F or G of this Section**, on a third or subsequent conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall

be sentenced to imprisonment with or without hard labor for not more than twenty years.

(4) A conviction for the violation of any other statute or ordinance with the same elements as R.S. 40:966(C) prohibiting the possession of marijuana, tetrahydrocannabinol or chemical derivatives thereof, shall be considered as a prior conviction for the purposes of this Subsection relating to penalties for second, third, or subsequent offenders.

~~E.F.~~ Except as otherwise authorized in this Part:

(1) Any person who knowingly or intentionally possesses sixty pounds or more, but less than two thousand pounds of marijuana, tetrahydrocannabinol, or chemical derivatives thereof, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~ten~~ five years, nor more than ~~sixty~~ thirty years, and to pay a fine of not less than fifty thousand dollars nor more than one hundred thousand dollars.

(2) Any person who knowingly or intentionally possesses two thousand pounds or more, but less than ten thousand pounds of marijuana, tetrahydrocannabinol, or chemical derivatives thereof, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~twenty~~ ten years nor more than ~~eighty~~ forty years, and to pay a fine of not less than one hundred thousand dollars nor more than four hundred thousand dollars.

(3) Any person who knowingly or intentionally possesses ten thousand pounds or more of marijuana, tetrahydrocannabinol, or chemical derivatives thereof, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~fifty~~ twenty-five years, nor

more than ~~eighty~~ **forty** years and to pay a fine of not less than four hundred thousand dollars nor more than one million dollars.

~~F.~~**G.** With respect to any person to whom the provisions of Subsection E **D and F** are applicable, the adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for probation or parole prior to serving the minimum sentences provided by Subsections E **D or F**.

§967. Prohibited acts--Schedule II, penalties

* * *

B. Penalties for violation of Subsection A. Except as provided in Subsection F, any person who violates Subsection A with respect to:

(1) A substance classified in Schedule II which is **an amphetamine or methamphetamine or which is** a narcotic drug, except cocaine or cocaine base or a mixture or substance containing cocaine or its analogues as provided in Schedule II(A)(4) of R.S. 40:964, ~~or which is an amphetamine or methamphetamine~~, shall be sentenced to a term of imprisonment at hard labor for not less than ~~five~~ **two** years nor more than thirty years; and may, in addition, be sentenced to pay a fine of not more than fifty thousand dollars.

(2) Pentazocine, shall be sentenced to imprisonment at hard labor for not less than ~~seven~~ **two** years nor more than ten years, **at least two years of which shall be served** without benefit of parole, probation, or suspension of sentence; ~~and~~, and, in addition, may be sentenced to pay a fine of not more than fifteen thousand dollars.

(3) Production or manufacturing of amphetamine or methamphetamine shall be sentenced to imprisonment at hard labor for not less than ~~forty~~ **ten** years nor more than ~~ninety-nine~~ **thirty** years, **at**

least ten years of which shall be served without benefit of parole, probation, or suspension of sentence, and in addition may be sentenced to pay a fine of not more than five hundred thousand dollars.

(4)(a) Production or manufacturing of cocaine or cocaine base or a mixture or substance containing cocaine or its analogues as provided in Schedule II(A)(4) of R.S. 40:964 shall be sentenced to ~~life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence~~ for not less than ten nor more than thirty years, at least ten years of which shall be served without benefit of parole, probation, or suspension of sentence, and may be fined not more than five hundred thousand dollars.

(b) Distribution, dispensing, or possession with intent to produce, manufacture, distribute or dispense cocaine or cocaine base or a mixture or substance containing cocaine or its analogues as provided in Schedule II(A)(4) of R.S. 40:964 shall be sentenced to a term of imprisonment at hard labor for not less than ~~five~~ two years nor more than thirty years, with the first ~~five~~ two years of said sentence being without benefit of parole, probation, or suspension of sentence; and may, in addition, be sentenced to pay a fine of not more than fifty thousand dollars.

* * *

F. Other penalties for possession. (1) Except as otherwise authorized in this Part:

(a) Any person who knowingly or intentionally possesses twenty-eight grams or more, but less than two hundred grams, of cocaine or of a mixture or substance containing a detectable amount of cocaine or of its analogues as provided in Schedule II(A)(4) of R.S.

40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~ten~~ **five** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars.

(b) Any person who knowingly or intentionally possesses two hundred grams or more, but less than four hundred grams, of cocaine or of a mixture or substance containing a detectable amount of cocaine or of its analogues as provided in Schedule II(A)(4) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~twenty~~ **ten** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than one hundred thousand dollars, nor more than three hundred fifty thousand dollars.

(c) Any person who knowingly or intentionally possesses four hundred grams or more of cocaine or of a mixture or substance containing a detectable amount of cocaine or of its analogues as provided in Schedule II(A)(4) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~thirty~~ **fifteen** years, nor more than ~~sixty~~ **thirty** years and to pay a fine of not less than two hundred fifty thousand dollars, nor more than six hundred thousand dollars.

(2) Except as otherwise authorized in this Part:

(a) Any person who knowingly or intentionally possesses twenty-eight grams or more, but less than two hundred grams, of amphetamine or methamphetamine or of a mixture or substance containing a detectable amount of amphetamine or methamphetamine or any of their analogues as provided in Schedule II(C) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not

less than ~~ten~~ **five** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars.

(b) Any person who knowingly or intentionally possesses two hundred grams or more, but less than four hundred grams, of amphetamine or methamphetamine or of a mixture or substance containing a detectable amount of amphetamine or methamphetamine or any of their analogues as provided in Schedule II(C) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~twenty~~ **ten** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than one hundred thousand dollars, nor more than three hundred fifty thousand dollars.

(c) Any person who knowingly or intentionally possesses four hundred grams or more of amphetamine or methamphetamine or of a mixture or substance containing a detectable amount of amphetamine or methamphetamine or any of its analogues as provided in Schedule II(C) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~thirty~~ **fifteen** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than two hundred fifty thousand dollars, nor more than six hundred thousand dollars.

(3) Except as otherwise authorized in this Part:

(a) Any person who knowingly or intentionally possesses twenty-eight grams or more, but less than two hundred grams, of gamma hydroxybutyric acid or of a mixture or substance containing a detectable amount of gamma hydroxybutyric acid or of its analogues as provided in Schedule II (D)(2) of R.S. 40:964, shall be sentenced to

serve a term of imprisonment at hard labor of not less than ~~ten~~ **five** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars.

(b) Any person who knowingly or intentionally possesses two hundred grams or more, but less than four hundred grams, of gamma hydroxybutyric acid or of a mixture or substance containing a detectable amount of gamma hydroxybutyric acid or of its analogues as provided in Schedule II (D)(2) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~twenty~~ **ten** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than one hundred thousand dollars, nor more than three hundred fifty thousand dollars.

(c) Any person who knowingly or intentionally possesses two hundred grams or more, but less than four hundred grams, of gamma hydroxybutyric acid or of a mixture or substance containing a detectable amount of gamma hydroxybutyric acid or of its analogues as provided in Schedule II (D)(2) of R.S. 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less than ~~thirty~~ **fifteen** years, nor more than ~~sixty~~ **thirty** years, and to pay a fine of not less than two hundred fifty thousand dollars, nor more than six hundred thousand dollars.

* * *

§979. Attempt and conspiracy

A. Except as otherwise provided herein, any person who attempts or conspires to commit any offense denounced and or made unlawful by the provisions of this Part shall, upon conviction, be fined

or imprisoned in the same manner as for the offense planned or attempted, but such fine or imprisonment shall not exceed one-half of the **longest term of imprisonment** ~~punishment~~ prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

* * *

§981. Distribution to persons under age eighteen

A. Persons over twenty-five to persons under eighteen. Any person who is at least twenty-five years of age, or more, who violates R.S. 40:966 or R.S. 40:967 by distributing a substance, listed in Schedules I or II, which is a narcotic drug, to a person under eighteen years of age, shall, upon conviction, be punished by ~~life~~ imprisonment at hard labor **for not less than ten nor more than thirty years.**

B. Any person who is at least eighteen years of age who violates R.S. 40:966 or R.S. 40:967 by distributing a substance listed in Schedules I or II which is a narcotic drug to a person under eighteen years of age who is at least three years his junior shall, upon conviction, be punished by a term of imprisonment of ~~up to twice that authorized by R.S. 40:966 or R.S. 40:967 or by payment of not more than twice the fine authorized by R.S. 40:966 or R.S. 40:967, or both.~~ **not less than five nor more than thirty years.**

C. Any person who is at least eighteen years of age who violates R.S. 40:966-R.S. 40:970 by distributing any other controlled dangerous substance listed in Schedules I, II, III, IV and V to a person under eighteen years of age who is at least three years his junior shall, upon conviction, be punished by a term of imprisonment up to ~~twice that~~ **one and one-half times the longest term of imprisonment**

authorized by R.S. 40:966-R.S. 40:970 or by payment of not more than twice the fine authorized by R.S. 40:966-R.S. 40:970, or both.

§981.1. Distribution to a student

Any person who violates any provision of R.S. 40:966 through R.S. 40:970 by distributing any controlled dangerous substance listed in Schedules I, II, III, IV, and V to any student enrolled in any public or private elementary, secondary, vocational-technical training, special, or postsecondary school or institution in Louisiana shall, upon conviction, be punished by a term of imprisonment of not more than ~~twice that~~ one and one-half times the longest term of imprisonment authorized by the applicable provisions of R.S. 40:966 through R.S. 40:970 or by payment of not more than twice the fine authorized by the applicable provisions of R.S. 40:966 through R.S. 40:970, or both.

§981.2. Soliciting minors to distribute controlled dangerous substances

* * *

B. Except as provided in Subsection C of this Section, any person who violates the provisions of this Section shall upon conviction be punished by a term of imprisonment of not more than one and one-half times the longest term of imprisonment ~~twice that~~ authorized by the applicable provision of R.S. 40:966 through 970, or by a fine of not more than twice that authorized by such applicable provision, or both.

C. Any person eighteen years of age or older who violates the provisions of this Section by soliciting, procuring, or counseling a person under eighteen years of age to distribute or to attempt to distribute cocaine in violation of R.S. 40:967(A) shall be sentenced to a term of imprisonment at hard labor for not less than ~~twenty years nor~~

~~more than twice that authorized by R.S. 40:967(B)(1), without benefit of probation, parole, or suspension of sentence. **ten nor more than thirty years.**~~

§981.3. Violation of Uniform Controlled Dangerous Substances Law

A.(1) Any person who violates a felony provision of R.S. 40:966 through R.S. 40:970 of the Uniform Controlled Dangerous Substances Law while on any property used for school purposes by any school, within one thousand feet of any such property, or while on a school bus, shall, upon conviction, be punished in accordance with Subsection E.

* * *

~~E.(1) On a first conviction, whoever **Whoever** violates a provision of this Section shall not be punished by the imposition of the maximum fine **and be imprisoned for** and not less than one-half nor more than the maximum term of **not more than one and one-half times the longest term of** imprisonment authorized by the applicable provisions of R.S. 40:966 through R.S. 40:970, with the minimum mandatory term of imprisonment being served without benefit of parole, probation, or suspension of sentence, provided in no case shall the term of imprisonment be less than the minimum term provided in R.S. 40:966 through R.S. 40:970.~~

~~(2) On a second or subsequent conviction, whoever violates a provision of this Section shall be punished by the imposition of the maximum fine and maximum term of imprisonment authorized by the applicable provisions of R.S. 40:966 through R.S. 40:970, without benefit of parole, probation, or suspension of sentence. An offense shall be considered a second or subsequent offense, if, prior to the~~

~~commission of such offense, the offender had at any time been convicted of any felony violation of this state, the United States, any other state, or any foreign country, relating to an act prohibited by the Uniform Controlled Dangerous Substances Law.~~

Section 5. Code of Criminal Procedure Art. 893(A) is hereby amended and reenacted to read as follows:

Art. 893. Suspension and deferral of sentence and probation in felony cases

A. When it appears that the best interest of the public and of the defendant will be served, the court, after a first or second conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole. The court shall not suspend the sentence of a conviction for a crime of violence as defined in R.S. 14:2(13)(a), (b), (c), (d), (e), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (t), (v), (w), (x), (bb), (cc), or (dd), or of a second conviction if the second conviction is for a violation of R.S. 14:73.5, R.S. 14:81.1, or R.S. 14:81.2, ~~or for a violation of the Uniform Controlled Dangerous Substances Law punishable by a term of imprisonment for more than five years.~~ The period of probation shall be specified and shall not be less than one year nor more than five years. The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

* * *

Section 6 is all new law.

Section 6. The provisions of this Act shall only have prospective effect.

Section 7. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____